COUNCIL OF THE EUROPEAN UNION

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL DIRECTIVE amending Directive 2006/112/EC on the common system of value added tax as regards a Quick Reaction Mechanism against VAT fraud

COUNCIL DIRECTIVE …/…/EU

of …

amending Directive 2006/112/EC on the common system of value added tax, as regards a Quick Reaction Mechanism against VAT fraud

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with a special legislative procedure,

[1] Opinion of 7 February 2013 (not yet published in the Official Journal).
[2] OJ C 11, 15.1.2013, p. 31.

Whereas:

(1) Tax fraud in the field of value added tax (VAT) leads to considerable budget losses and affects the conditions of competition and thus the operation of the internal market. Specific sudden and massive forms of tax fraud have recently developed especially via the use of electronic means which facilitate rapid illegitimate trade on a large scale.

(2) Council Directive 2006/112/EC[1] allows Member States to apply for a derogation from that Directive in order to prevent certain forms of tax evasion or avoidance.

(3) Recent experience has demonstrated that the procedure provided for in Article 395 of Directive 2006/112/EC is not able to respond quickly enough to requests by Member States for urgent measures.

(4) Experience has also shown that the designation of the recipient as the person liable for the payment of the VAT (reverse charge) is, in certain cases, an effective measure to stop VAT fraud in specific sectors.

(5) Under the reverse charge provisions in Articles 199 and 199a of Directive 2006/112/EC, Member States do not have the flexibility to respond quickly to sudden and massive fraud in categories of goods and services falling outside the scope of those Articles. Specific arrangements therefore need to be made to address these circumstances.

[1] Council Directive 2006/112/EC of 28 November 2006 on the common system of value addend tax (OJ L 347, 11.12.2006, p. 1).

(6) Considering the massive instances of fraud that have occurred, a rapid and exceptional response to further instances of sudden fraud is best guaranteed by a Quick Reaction Mechanism ("QRM") special measure consisting of the option to apply for a short period a reverse charge, following appropriate notification by the Member State concerned. In order to ensure the exercising of the option is proportionate to the problem, the Commission, once it is in possession of the relevant information, should have a short period in which to appraise the notification and confirm whether it objects to the QRM special measure. Member States should have the opportunity for their views to be taken into account by the Commission, and should therefore be fully informed of the notification and any additional information provided throughout the process. Additionally, the Council should then decide on any further application of the reverse charge by an implementing Decision pursuant to Article 395 of Directive 2006/112/EC.

(7) The Member State that has notified its intention to apply the QRM special measure may do so once the Commission has notified the absence of objection.

(8) In order to provide for the further application of the reverse charge, at the earliest opportunity and before the expiry of the QRM special measure, the procedure laid down in Article 395 of Directive 2006/112/EC should be subject to a shorter deadline.

(9) Rapid processing of Member States' notifications under the QRM will be facilitated if a standardised form is established for those notifications and for the provision of any additional information to the Commission. Implementing powers should therefore be conferred on the Commission as regards that standardised form.

(10) Since a QRM can only be a temporary solution pending longer term legislative solutions with a view to making the VAT system more resilient to instances of VAT fraud, the QRM should only apply for a limited period of time.

(11) In order to evaluate the effectiveness of the QRM, the Commission should prepare an overall assessment report on the impact of the mechanism in addressing instances of sudden and massive fraud.

(12) Since the objective of the action to be taken, namely to address sudden and massive fraud phenomena in the field of VAT which very often have an international dimension, cannot be sufficiently achieved by the Member States, as they are not in a position to individually counter the fraud circuits related to new forms of trade which involve several countries at the same time, and can therefore, by reason of ensuring a quicker and, as a result, a more adequate and effective response to these phenomena, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(13) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is amended as follows:

(1) the following Article is inserted:

"*Article 199b*

1. A Member State may, in cases of imperative urgency and in accordance with paragraphs 2 and 3, designate the recipient as the person liable to pay VAT on specific supplies of goods and services by derogation from Article 193 as a Quick Reaction Mechanism ("QRM") special measure to combat sudden and massive fraud liable to lead to considerable and irreparable financial losses.

The QRM special measure shall be subject to appropriate control measures by the Member State with respect to taxable persons who supply the goods or services to which that measure applies, and shall be for a period not exceeding nine months.

2. A Member State wishing to introduce a QRM special measure as provided for in paragraph 1 shall send a notification to the Commission using the standardised form established in accordance with paragraph 4 and at the same time send it to the other Member States. The Member State shall provide the Commission with the information indicating the sector concerned, the type and the features of the fraud, the existence of imperative grounds of urgency, the sudden and massive character of the fraud and its consequences in terms of considerable and irreparable financial losses. If the Commission considers it does not have all the necessary information, it shall contact the Member State concerned within two weeks of receipt of the notification and specify what additional information is required. Any additional information provided by the Member State concerned to the Commission shall at the same time be sent to the other Member States. If the additional information provided is not sufficient, the Commission shall inform the Member State concerned thereof within one week.

The Member State wishing to introduce a QRM special measure as provided for in paragraph 1 shall at the same time also make an application to the Commission in accordance with the procedure laid down in Article 395(2) and (3).

3. Once the Commission has all the information it considers necessary for appraisal of the notification referred to in the first subparagraph of paragraph 2, it shall notify the Member States thereof. Where it objects to the QRM special measure, it shall produce a negative opinion within one month of that notification, and shall inform the Member State concerned and the VAT Committee thereof. Where the Commission does not object, it shall confirm this in writing to the Member State concerned and to the VAT Committee within the same time period. The Member State may adopt the QRM special measure from the date of receipt of that confirmation. In appraising the notification, the Commission shall take into account the views of any other Member State sent to it in writing.

4. The Commission shall adopt an implementing act establishing a standardised form for the submission of the notification for the QRM special measure referred to in paragraph 2 and of the information referred to in the first subparagraph of paragraph 2. That implementing act shall be adopted in accordance with the examination procedure referred to in paragraph 5.

5. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council(*) shall apply and for this purpose the committee shall be the committee established by Article 58 of Council Regulation (EU) No 904/2010(**).

(*) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(**) Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p. 1).";

(2) in Article 395, the following paragraph is added:

"5. In cases of imperative urgency as set out in Article 199b(1), the procedure laid down in paragraphs 2 and 3 shall be completed within six months of receipt of the application by the Commission.".

Article 2

Before 1 January 2018, the Commission shall present to the European Parliament and to the Council an overall assessment report on the impact of the QRM provided for in point (1) of Article 1.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply until 31 December 2018.

Article 4

This Directive is addressed to the Member States.

Done at …,

For the Council
The President